

Worries grow about medically assisted dying in Canada

As the number of deaths under provisions in the recently revised medical assistance in dying law increases, its impending expansion is to include individuals with mental illness. Paul Webster reports.



“What was originally conceived as an exceptional practice in medicine has quickly become normalised” says Trudo Lemmens, a health law specialist at the University of Toronto (ON, Canada) who has tracked the impacts of Canada’s medical assistance in dying (MAID) legislation since it was first enacted in 2016.

“Even before the law is set to be expanded to include mentally ill patients, we already have worryingly high numbers of people dying,” says Lemmens, who argues that Canada’s approach is far more permissive than comparator nations, including Belgium and the Netherlands. “We’ve failed to sufficiently safeguard against the medicalisation of ageing.”

Lemmens’ warning comes in the wake of changes to the MAID law enacted in March, 2021, which scrapped a so-called foreseeable death requirement designed to ensure that Canadian patients seeking to die with the assistance of a physician had terminal illnesses, such as untreatable forms of cancer.

“I worry that we have to be more careful,” says Lemmens. “What we see in Canada are rates of assisted suicide and euthanasia that are quickly bypassing Belgium and the Netherlands.”

The new law enacted last year stipulates that, starting in March, 2023, MAID will be expanded to include patients with mental illnesses.

Amid this expansion, Lemmens warns that the current numbers of patients dying are already a “red flag”, indicating a possible over-permissiveness on the part of some Canadian physicians who care for patients seeking death.

“Unlike in Belgium and Netherlands, where physicians are required to pursue mental illness treatment options with their patients,” says Lemmens, “this

idea has been abandoned in Canada, where patients can simply say they don’t want treatment.”

For evidence that Canada might have a problem with permissiveness when it comes to MAID, Lemmens points to data from Health Canada, the country’s federal health-care regulatory agency, indicating that, following the legal change that scrapped the foreseeable death requirement in March, 2021, the number of Canadians who died with the assistance of a physician spiked by 34% in the remaining 9 months of 2021.

The legal change in 2021 was described by the Canadian Government at the time as being necessitated by a lower court decision in Quebec that determined that the 2016 law’s foreseeable death stipulation was inconsistent with constitutional provisions guaranteeing equitable access to medical care, including MAID.

In crafting a new law, known as Bill C-7—*An Act to amend the Criminal Code (medical assistance in dying)*—the federal Justice Minister, David Lametti, at first said that because the issue of offering medical assistance in dying

to individuals with mental illness was problematic, the government would not introduce it.

However, when a member of the unelected Canadian senate named Stan Kutcher, who is a psychiatrist, proposed a so-called sunset clause that would repeal the exclusion of mental illness 18 months after Bill C-7 was implemented, the Canadian Government suddenly reversed course and agreed to expand the law to include patients with mental illness. In the end, the government opted to do so in 24 months, starting in March, 2023.

While enacting the new law last year, the government acknowledged that “important outstanding issues related to MAID must still be explored. Areas, such as the eligibility of mature minors, advance requests, mental illness, palliative care, and the protection of Canadians living with disabilities, will be considered during a parliamentary review of the MAID legislation.”

That parliamentary review is now underway. The review is expected to result in a set of recommendations for the government later this year. Nevertheless, these recommendations will be non-binding on the government, observes



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Alex Schadenberg, Director of an Ontario-based group called the Euthanasia Prevention Coalition, which disseminates information about the implementation of MAID in clinical settings across the country.

“The parliamentary committee has a very limited mandate,” Schadenberg notes. “We think the MAID law should be fully reviewed, and in the meantime we should go back to the original law passed in 2016.”

Schadenberg says that the Canadian Government’s management of the legal reforms to the 2016 MAID law, which included a decision not to appeal the Quebec lower court decision that paved the way for the decision to greatly expand access to MAID, has created a situation where “it’s becoming easier to get death than treatment”.

Some international observers share the concerns of Lemmens and Schadenberg. Last year, a team of special rapporteurs for the UN warned that Canada’s liberalisation of medically assisted dying posed threats to its older and infirm populations.

“There is a grave concern that, if assisted dying is made available for all persons with a health condition or impairment,” the UN reporters warned in a report, “a social assumption might follow (or be subtly reinforced) that it is better to be dead than to live with a disability.”

During a recent visit to Canada, Pope Francis also seemed to call out Canada’s liberalisation of medically

assisted dying. “We need to learn how to listen to the pain,” he told a crowd in Quebec, “of patients who, in place of affection, are administered death.”

Helen Long, President of Dying with Dignity, a Toronto-based group that played an instrumental role in persuading the Canadian Government to first introduce the MAID legislation in 2016, strongly rejects the suggestion that MAID is drifting towards becoming an alternative to traditional medical treatments aimed at recovering health.

Despite noting that the access to many types of medical treatment has become increasingly restricted due to resource constraints across Canada in the wake of the COVID-19 pandemic, which has put enormous pressure on Canada’s network of provincial, territorial, and federal health-care systems, Long insists that “you can’t get MAID just because you can’t get treatment. And you can’t deny access to MAID because the health-care systems are threatened.”

While citing data indicating that people with cancers, as well as those with cardiovascular, neurological, and respiratory diseases, account for around 95% of all medically assisted deaths in Canada, Long argues that existing safeguards within the new law passed in 2021 are sufficient. “We don’t see any evidence of problems,” she insists.

As for the surge in the numbers of people dying with the assistance of a physician since the removal of the foreseeable death stipulation from the law in 2021, Long argues that this rise is propelled by the expansion of public awareness of the availability of MAID, rather than possible over-permissiveness among some physicians.

In this context, Long says that she sees the expansion of the law to include patients with mental illnesses as “a good thing”. She anticipates that “the number of people with mental illnesses who seek and obtain MAID will be miniscule”.

Deborah Wise Harris, Communications Manager for the Canadian Mental Health Association—which has

branches offering programmes and services in 330 communities across Canada—said in a written statement that “as we look ahead to March, 2023, when legislative change will allow people to qualify for MAID when a mental illness is the sole underlying condition, governments at all levels must immediately provide more and better mental health services and social supports for people with mental illnesses”.

The association’s current acceptance of the expansion of the law to include patients with mental illness represents a reversal from its initial reaction to the proposal, which stated “that until the health-care system adequately responds to the mental health needs of Canadians, assisted dying should not be an option—not now and not 2 years from now”.

In initially opposing the new law, the association also stated that “it is not possible to determine whether any particular case of mental illness represents ‘an advanced state of decline in capabilities that cannot be reversed’”, and emphasised that “cases of severe and persistent mental illness that are initially resistant to treatment can, in fact, show significant recovery over time. Mental illness is very often episodic. Death, on the other hand, is not reversible. In Dutch and Belgian studies, a high proportion of people who were seeking MAID for psychiatric reasons, but did not get it, later changed their minds.”

The association now calls for patients considering MAID to have access to counselling, mental health and disability support services, palliative care, access to housing and income supports, and consultations with relevant professionals delivering these services.

The association also calls “for a minimum 90-day assessment period to ensure sufficient time for multiple visits and to identify services” in situations where patients with mental illness seek medically assisted death.

Paul Webster